as constructive trustee. *Peyton* v. *Smith*, 22 N. C. 325; *Hale* v. *Aaron*, 77 N. C. 371. They cannot, against the right of the vendor to avoid. *Barton* v. *Hassard*, 3 Dr. & War. 461. But, irrespective of actual fraud, the danger in a conflict of interest requires that all profits from discounting the claims of creditors should accrue to the estate. *Woods* v. *Irwin*, 163 Pa. St. 413, 30 Atl. 232; *Cox* v. *John*, 32 Oh. St. 532. The executor is equally acting within his duties and under the advantage of his official knowledge when buying at a discount the claims of legatees. *Lovett* v. *Morey*, 66 N. H. 273, 20 Atl. 283. There seems to be no reason for a different rule. *Contra*, *Peyton* v. *Smith*, *supra*; *Hale* v. *Aaron*, *supra*. Finding that the transaction was not a gift but a payment on account of the advancement, the court in the principal case probably reached the correct result.

INSURANCE — FIDELITY INSURANCE — VARIATION OF RISK. — A bond executed by the defendant to secure the plaintiff bank against loss incurred through employing X. as assistant cashier contained a provision "that the employé can perform other duties than those properly belonging to the position mentioned . . . without notice . . . to the company." After the bond was executed, X. acquired a majority of the stock of the bank, and became a director and cashier. He then defaulted. *Held*, that the defendant is discharged from liability on the bond. *Farmers' & Merchants' State Bank* v. *United States Fidelity & Guaranty Co.*, 133 N. W. 247 (S. D.).

The equitable defense based on variation of risk by reason of a material change in the employee's duties is waived in this case by the clause in the bond. *Fidelity and Casualty Co.* v. *Gate City National Bank*, 97 Ga. 634, 25 S. E. 392; *Champion Ice, etc. Co.* v. *American Bonding & Trust Co.*, 115 Ky. 863, 75 S. W. 197. *Contra*, *National Mechanics' Banking Association* v. *Conkling*, 90 N. Y. 116. The contract of insurance is a personal one. See FROST, GUARANTY INSURANCE, 2 ed., § 113 (E). A change in the personality of the insured, a change in partnership, or from a partnership to a corporation, would give a defense. *Dance* v. *Girdler*, 1 B. & P. N. 34; *Dry* v. *Davy*, 10 A. & E. 30. But though the membership of a corporation is always changing, the corporation remains the same. *Cf. London, etc. Ry. Co.* v. *Goodwin*, 3 Exch. 320. The majority of the court rest their decision on the ground that the subsequent acquisition of a majority of the stock by the employee brought about a situation not contemplated by the parties, in which it would be unconscionable to continue to hold the surety to his legal obligation without giving notice. No cases have been found to support the decision. Where the risk is increased through no act of the obligee, the cases go no further than to give a defense when the employee is retained in service after knowledge of his dishonesty. *Phillips* v. *Foxall*, L. R. 7 Q. B. 666; *Watertown Fire Ins. Co.* v. *Simmons*, 131 Mass. 85. It is submitted that the facts of the principal case do not warrant a further imposition of affirmative duties on the insured.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — POWER TO DENY REPARATION ON GROUND OF LACHES. — A shipper sought reparation through the Interstate Commerce Commission for excessive freight charges. The commission found that the rate charged was unreasonable, but denied relief for all charges previous to the filing of the complaint on the ground of laches. *Held*, that it cannot deny relief on such a ground. *Russe* v. *Interstate Commerce Commission*, U. S. Commerce Ct., Feb. 13, 1912.

The Interstate Commerce Commission derives all its powers from the Interstate Commerce Act of 1887 and its supplements, and can exercise no powers which are not given it thereby. See BEALE & WYMAN, RAILROAD RATE REGULATION, § 1034. In considering a complaint its sole consideration must be whether or not the situation which the carriers have created violates that act.

See *New York Produce Exchange* v. *Baltimore & Ohio R. Co.*, 7 Interst. C. Rep. 612, 658. Thus, the commissioners have no power to declare a rate unreasonable on the ground that the carrier has estopped itself from making a raise by a long-continued lower rate. *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 31 Sup. Ct. 288. If they proceed in a federal court to enforce their order, they are not prejudiced by the fact that the original complainant came before them with unclean hands. *Interstate Commerce Commission* v. *Southern Pacific Co.*, 132 Fed. 829. Nor can the fact that the shipper has been engaged in an unlawful combination bar his right to relief at the hands of the commission. *Tift* v. *Southern R. Co.*, 10 Interst. C. Rep. 548. The act allows the shipper two years in which to file his complaint. U. S. COMP. STAT., SUPP. 1909, 1159. It seems an unwarranted assumption of authority for the commission to shorten the time expressly allowed by the very act which it was created to enforce.

JUDGMENTS — OPERATION AS BAR TO OTHER ACTIONS — EFFECT OF JUDGMENT AS JUSTIFICATION FOR ACTS DONE BEFORE ITS REVERSAL. — A decree that the defendant was entitled to a certain amount of the water of a stream was reversed on an appeal by the plaintiff. The undertaking given on appeal did not stay the operation of the decree. After the rendering of the decree and before its reversal the defendant used the amount of water allowed by the decree. *Held*, that the plaintiff cannot recover for damage to his land caused thereby. *Porter* v. *Small*, 120 Pac. 393 (Or.).

It seems to be well settled that no action in tort will lie for acts done in pursuance of an erroneous judgment, subsequently reversed. Where the alleged tort is false imprisonment, no tort is committed, since irregularity in the legal process is an element of the wrong. *Simpson* v. *Hornbeck*, 3 Lans. (N. Y.) 53; *Williams* v. *Smith*, 14 C. B. N. S. 596. In other cases, however, by the reversal the acts done are subsequently proved wrongful; yet the fact that they are done in pursuance of a legal judgment is regarded as a justification. *Loring* v. *Steineman*, 42 Mass. 204; *Thompson* v. *Reasoner*, 122 Ind. 454, 24 N. E. 223. *Cf. Day* v. *Bach*, 87 N. Y. 56. To allow the action would involve the assumption that a valid judgment is not a foundation of rights. *Bridges* v. *McAlister*, 106 Ky. 791, 51 S. W. 603. *Cf. Mark* v. *Hyatt*, 135 N. Y. 306, 31 N. E. 1099. Though this may work a hardship on the defendant, he may protect himself by getting a stay of execution, on giving a proper bond. But it seems also well settled that the defendant must restore any profit he may have made, since it is not equitable for him to keep it. *Lott* v. *Swezey*, 29 Barb. (N. Y.) 87; *Travellers' Ins. Co.* v. *Heath*, 95 Pa. St. 333. In the principal case, however, the question of restitution was not presented.

LEGISLATURES — RIGHT OF SPEAKER TO PREVENT DISORDER BY COMPELLING ATTENDANCE OF MEMBER. — A member of a colonial legislative assembly left the chamber in a disorderly manner. As a necessary measure, to prevent further disorder, the speaker had the sergeant-at-arms bring him back and admonished him. *Held*, that the speaker is liable in an action for false imprisonment. *Perry* v. *Willis*, 11 N. S. W. S. R. 479.

A colonial legislative assembly has no inherent power to punish either a stranger or one of its members for contempt. *Kielley* v. *Carson*, 4 Moore P. C. 63; *Doyle* v. *Falconer*, 4 Moore P. C. N. S. 203. Every legislative assembly, when duly constituted, has the power to compel the attendance of its members. See CUSHING, LAW & PRACTICE OF LEGISLATIVE ASSEMBLIES, 2 ed., § 264. A member who is guilty of disorderly conduct in the assembly may be removed by order of the assembly. See *Doyle* v. *Falconer*, *supra*, 219, 220. It has been held that this power of removal is impliedly delegated to the speaker as necessarily incident to his office as presiding officer. *Toohey*